

REMARKS

The application has been amended to correct the cited informalities, to distinguish the claimed invention over the cited prior art, and to place the application, as a whole, into a *prima facie* condition for allowance. Care has been taken to avoid the introduction of any new subject matter into the application as a result of the foregoing amendments.

Claims 1 – 15 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Fienberg, U.S. Pat. No. 5,046,737, in view of Gerow, U.S. Pat. No. 6,309,298. Applicant notes that while the Examiner's initials on Applicant's Information Disclosure Citation indicates that the Examiner has considered both the Fienberg '737 and Fienberg 4,793,090 references, the Examiner's use of specific reference numerals in the text of the Office Action indicate that the Examiner is referring to Fienberg '737, rather than Fienberg '090, as a basis for this rejection, inasmuch as there is no correspondence between said reference numerals and cited structure in Fienberg '090.

In rejecting Claims 1 – 15, the Examiner has refused to give patentable weight to certain limitations which the Examiner deems to be "game rules", rather than structural limitations. While Applicant respectfully traverses the Examiner's substantive basis for the rejection of the claims, Applicant has amended Claim 1 to include additional structural limitations which are neither disclosed nor suggested by either the Fienberg '737 or Gerow '298 references, taken either alone or in combination.

Claim 1 has been amended to include, *inter alia*, the structural limitation of: i) indicia on the master game card for identifying a maximum allowed jackpot value.

Applicant respectfully submits that all of the limitations of Claim 1, as amended, are entitled to patentable weight.

Applicant further respectfully submits that Claim 1, as amended, is neither disclosed nor suggested by the cited references, even if the Examiner maintains the above-referenced refusal. The present invention as disclosed and claimed is directed to an apparatus for controlling the play of a progressively lottery type game system, and specifically stopping the play of the game when a jackpot prize which is accumulated from the play of prior games gives rise to a jackpot prize that exceeds a maximum predetermined value which is made known to all game players.

In particular, neither Fienberg '737 nor Gerow '298 disclose or suggest the claimed means for determining when a current accumulated jackpot value exceeds a predetermined maximum jackpot value which is accumulated from the play of prior games; or means for identifying at least one game player to receive a predetermined maximum accumulated jackpot value so as to stop the progressive play of a game.

Applicant indeed notes that the Examiner's substantive basis for rejection is directed to the refusal to give patentable weight to certain limitations which the Examiner deems to be "game rules, now overcome by the present amendment – and not upon any disclosure of either of the cited references.

Inasmuch as Claims 2 – 9 and 11 – 15 each depend from and further limit amended Claim 1, Applicant respectfully submits that the Examiner's bases for the rejection of these claims under 35 U.S.C. §103(a) should be deemed overcome as well. Accordingly, reconsideration and withdrawal of the rejections of Claims 1 – 9 and 11 – 15 are respectfully solicited

Claim 10 has been cancelled.

New Claims 16 – 20 are submitted for the Examiner's consideration. Independent Claim 16 is drawn to a method of Applicant's invention. Claim 16, includes, *inter alia*, the step of repeating certain prior steps until the jackpot is awarded as a prize in a prior step or an accumulated jackpot reaches at least the predetermined maximum jackpot maximum value. Applicant respectfully submits that this limitation is neither disclosed nor suggested by the cited references. Accordingly, allowance of new Claims 16 – 20 is respectfully solicited.

In view of the foregoing, Applicant respectfully submits that claims Claims 1 – 9 and 11 – 20, and the application as a whole, are all in *prima facie* condition for immediate allowance. Reconsideration and allowance of the application are respectfully solicited.

Should anything further be required, a telephone call to the undersigned at (312) 456-8400 is respectfully requested.

Respectfully submitted,
GREENBERG TRAURIG, LLP

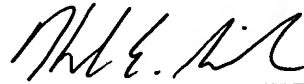
Dated: October 1, 2004



Howard E. Silverman
One of Attorneys for Applicant

CERTIFICATE OF MAILING

I hereby certify that this AMENDMENT AND COMMUNICATION is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, on October 1, 2004.



Howard E. Silverman